IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6086 of 1987

with

SPECIAL CIVIL APPLICATION No 6745 of 1987

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M B PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6086 of 1987
   MR MR ANAND for Petitioner No. 1
   MR DIPAK C RAVAL for Petitioner No. 1
   MR LB DABHI AGP for Respondent No. 1-2
2. Special Civil Application No. 6745 of 1987
   FRESH NOTICE REQD(R) for Petitioner No. 1
   MR LB DABHI AGP for Respondent No. 1

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 05/08/2004

ORAL JUDGEMENT

In this writ petition, the petitioner has sought direction against the respondent authority for the fixation of his seniority in the cadre of Senior Clerk and higher post, vis-a-vis, his junior on the basis of their respective dates of passing the Government Diploma in Cooperation and Accountancy Examination (GDC & A for short) and also to consider the petitioner for promotion to the post of Assistant Registrar on the basis of his seniority and any incidental benefits, even by giving benefit of deemed date of promotion in the post of Head Clerk, Office Supdt., Assistant Registrar on the basis of his seniority and resultant salary on that basis with arrears of pay.

A short resume of facts may be stated first. The petitioner is an employee of respondent no.1 State of Gujarat and he was working, at the relevant time, in the office of respondent no.2- Registrar, Cooperative Society as Auditor Grade I, Class III post in the cadre of Office Supdt. The promotion to the post of Assistant Registrar or equivalent in Class II is from the post of Auditor Grade I. The case of the petitioner is that he has been fully qualified to the promotion of the said post in view of the clean and meritorious service record, and he has unnecessarily suffered because of supersession by promoting his juniors, either deliberately or due to misunderstanding of the statutory rules, while fixing the seniority in the post he held at the time of filing of the petition.

The respondent authority has filed counter interalia contenting that the allegations made in the petition are without any basis. According to the contention of the respondent authority, on account of interpretation of Rules 14 and 15 of the GDC & A Examination misunderstanding has been generated and the Government is therefore, trying its best to reschedule and recast the entire seniority list. It is also contended that the Government is reexamining the whole issue and so far as the matter of petitioner is concerned, it is under active consideration of the Department, along with the other similar cases. It is further pleaded that similar case, like that of petitioner, has been decided by the Gujarat Civil Service Tribunal, Gandhinagar in an appeal No.346/85, which was filed by one Ms.V.S.Pandya of the

said department and in that the Tribunal has reached to the conclusion that the person who has passed GDC & A Examination within the prescribed chances and time limit, certainly could not be denied seniority over those who have not passed examination earlier. It is in this context, further, pleas raised with the question of fixation of seniority, who have passed the GDC & A Examination, earlier with their seniors, who have not exhausted their chances, as well as, placing of persons who have passed the GDC & A Examination with a special chance in between the persons, juniors and seniors having not been detailed by the Tribunal. However, to honuor the judgment of the Tribunal and as per the interpretation, the department has to be revised seniority list and the same is under challenge before this Court in Special Civil Application No.6745/87, and one SCA 2560/88, and S.C.A.No.2560/88, which is stated to have been withdrawn.

After having considered the pleas and contentions raised, the pleadings and the submissions raised before this Court in the course of hearing, it is rightly and jointly submitted that when the question of seniority in the light of passing of GDC & A Examination between the juniors and seniors and in terms of what number of attempts, it would be appropriate to direct the respondent authority to expeditiously take the decision, since the tentative seniority list has already been published. It could not be finalized so far so as long time as stated in the affidavit in reply and stated in course of the oral submissions by learned A.G.P. Mr.Dabhi is due to the pendency of the writ petition being Special Civil Application No. 6745/87, which is dismissed for default hereby and rule issued in that petition is discharged. Since that petition has now no more live, and in view of the long lapse of time and again as sensitive question of seniority amongst the employees, it will be just and reasonable to direct the respondent authority to consider the case of the petitioner and to grant the benefits including the monetary consequential benefits, while fixing the seniority in light of provision of Rule and Regulation in general and in particular Regulation 15 of the Government Diploma in Cooperation and Accountancy Examination, as expeditiously as possible, and preferably on or before 02.10.2004. With these observations, the petition shall stand partly allowed. Rule made absolute accordingly without any order as to costs.

sns [J.N.BHATT, J]